

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TROY A. SYKES,

Plaintiff,

v.

AVENAL STATE PRISON, et al.,

Defendants.

Case No.: 1:23-cv-00966-JLT-SKO (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS CERTAIN CLAIMS AND
DEFENDANTS**

14-DAY OBJECTION PERIOD

Plaintiff Troy A. Sykes is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. INTRODUCTION

On September 16, 2024, the Court issued its Second Screening Order. (Doc. 12.) The Court found Plaintiff stated a cognizable Eighth Amendment claim against Defendant John Doe but failed to allege any other cognizable claim against any named defendant. (*Id.* at 4-9.) Plaintiff was directed to do one of the following within 21 days: (1) notify the Court he did not wish to file a second amended complaint and instead was willing to proceed only on the Eighth Amendment conditions of confinement claim against Defendant Doe, the remaining claims to be dismissed; or (2) file a second amended complaint curing the deficiencies identified in the Court's order, or (3) file a notice of voluntary dismissal. (*Id.* at 10.)

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On September 26, 2024, Plaintiff filed a notice stating he wished to proceed only on the claim found cognizable by the Court. (*See* Doc. 13.)

II. ORDER AND RECOMMENDATIONS

As an initial matter, the Court **DIRECTS** the Clerk of the Court to update the docket for this action as follows:

1. Terminate “Avenal State Prison” and “Gavin Newsome” as these defendants were not named in Plaintiff’s first amended complaint;
2. Add “John Doe” as a defendant on the docket as “John Doe (ASP Food Service Head Manager)” was named in Plaintiff’s first amended complaint.

Further, for the reasons set forth above, the Court **RECOMMENDS** that:

1. This action **PROCEED only** on Plaintiff’s Eighth Amendment conditions of confinement claim against Defendant John Doe;
2. Defendants Martin Gamboa, Hernandez (ASP Kitchen Staff), ASP Supervising Correctional Cooks, J. Moekly, H. Moseley, and A. Shimmin be **DISMISSED** from this action; and
3. Any remaining claims in Plaintiff’s first amended complaint be **DISMISSED**.

These Findings and Recommendations will be submitted to the district judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these Findings and Recommendations, a party may file written objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may result in waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **September 30, 2024**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE